



**APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE**

MONDAY, DECEMBER 14, 2009

**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA 85351**

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:01 p.m. Roll call confirmed the presence of Task Force members as noted.

1. Approval of Minutes from the December 7, 2009 Meeting

MOTION AND VOTE

CINDI EBERHARDT MOVED APPROVAL OF THE DECEMBER 7, 2009 CHARTER REVIEW TASK FORCE MINUTES. CHARLIE SMITH SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. Public Comment

Ray Torres, Chair of the Orange Coalition, spoke about Article 12, condemnation and eminent domain, and the Arizona American Water Company.

Stan Lutz, Bryan Cave LLP, discussed the proposed revisions to Article 12, indicating that the amendments proposed by the Orange Coalition are sound public policy. They recognize the

expertise of the Corporation Commission and other state agencies to determine whether the citizens of Scottsdale are being adequately served.

The Task Force discussed Article 12 with Mr. Lutz.

3. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter

- a. Article 7. Ordinances and Resolutions. Please note that Article 7, Sec. 14. Voter Approval for Certain Public Expenditures will be discussed on January 11, 2010.

Brent Stockwell reviewed previous discussions regarding Article 7 at the December 7, 2009 meeting, and discussed the proposed changes recommended by staff.

Chair Twist stated he extended an invitation on behalf of the Task Force to Kevin McCarthy, Executive Director of the Arizona Tax Research Association, to make a presentation at the January 11 meeting.

Chair Twist asked for clarification regarding the proposed changes to Section 6, and asked whether it would be prudent for the Charter to still have a supermajority provision in place in addition to a reference to State law. Brent Stockwell explained the passage of emergency measures is regulated by the Arizona Constitution, and clarified in Title 19 of the Arizona Revised Statutes. The Constitution requires a two-thirds majority vote, while Title 19 states three-fourths.

City Attorney Sherry Scott said it would be fine to leave this provision of the Charter as is; however, staff recommended this change to eliminate confusion and the appearance of a conflict between the Charter and State law.

The Task Force discussed their concerns regarding the proposed amendments to Section 6.

Charlie Smith asked for clarification regarding Section 5. Sherry Scott explained that some ordinance amendments come up at the night of Council meetings. The current Charter provides that ordinance amendments should be posted 24 hours in advance, and if not posted can be read into the record. The proposed language provides an alternative to reading amendments word-by-word at a public meeting.

The Task Force discussed the proposed changes to Section 5.

MOTION AND VOTE

CINDI EBERHARDT MOVED THAT THE TASK FORCE RECOMMEND TO THE CITY COUNCIL AMENDMENTS TO ARTICLE 7, SEC. 2, SEC. 3 AND SEC. 5 AS SET FORTH ON THE SCREEN. CHARLIE SMITH SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

“Sec. 2. Ayes and nays to be recorded.

The ayes and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the ~~journal~~ RECORD of the proceedings of the council.”

“Sec. 3. When majority or LARGER THAN MAJORITY~~2/3~~ vote required.

~~A majority vote of all the members of the council shall be necessary to pass any ordinance or resolution having the effect of an ordinance except that the adoption or re adoption of, or a major amendment to the general plan shall be approved by affirmative votes of at least two-thirds of the members of the council. A "major amendment" to the general plan shall be as defined by state law, RESOLUTION OR MOTION EXCEPT WHERE A LARGER THAN MAJORITY VOTE IS REQUIRED BY ORDINANCE, OR STATE OR FEDERAL LAW."~~

~~"Sec. 5. Reading or posting and passage of ordinances and resolutions; effective date.~~

~~All proposed ordinances and resolutions having the effect of ordinances, shall either be read in full or posted in a public place at least twenty-four (24) hours prior to their adoption, provided that if any amendments are proposed to a posted ordinance such amendments shall be read in full PRESENTED AND DISCUSSED DURING THE PUBLIC MEETING prior to their adoption.~~

~~A measure may be placed upon final passage at the same meeting as when introduced by unanimous consent of the council.~~

~~Measures, ORDINANCES OR ANY OTHER REFERABLE ACTIONS without the emergency clause shall take effect and become operative thirty (30) days after the date of their passage."~~

The Task Force had further discussion regarding possible changes to Section 6.

Sherry Scott clarified that she and many of her staff believe a vote of at least six council members is required to pass an emergency measure, which is why the change was proposed. She discussed State statutes regarding the matter, and read the pertinent section of the Arizona Constitution.

The Task Force decided not to recommend changes to Section 6.

MOTION AND VOTE

CHARLIE SMITH MOVED THAT THE TASK FORCE RECOMMEND TO THE CITY COUNCIL THAT SECTIONS 8, 9, 10, 12, AND 13 BE AMENDED AS PROPOSED. CINDI EBERHARDT SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

~~"Sec. 8. Publication of ordinances and resolutions.~~

~~All ordinances and resolutions having the effect of ordinancesLAW, except emergency measures, shall be published, AS REQUIRED BY STATE LAW OR ORDINANCE, once within ten (10) FIFTEEN (15) days of their passage, in the official newspaper of the city before they become effective and operative.~~

~~Emergency ordinances MEASURES which have been passed by the necessary vote of five (5) members of the council shall be published one time in the official newspaper of the city within ten (10) days after their passage AS REQUIRED BY STATE LAW OR ORDINANCE."~~

~~"Sec. 9. How ordinances and resolutions are to be revised, reenacted and amended.~~

~~Ordinances, or resolutions having the effect of an ordinance, shall not be revised, reenacted or amended by reference to title only, but the ordinance, or resolution having the effect of an ordinance to be revised or reenacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted in the method provided in this charter for the adoption of ordinances and resolutions.~~

“Sec. 10. How ordinances or resolutions are to be repealed or suspended.

No ordinance, or resolution ~~having the effect of an ordinance~~ or section thereof shall be repealed or suspended except by ordinance or resolution adopted in the manner provided in this charter.”

“Sec. 12. Procedure for adoption by reference.

The council may enact the provisions of a code or public record BY REFERENCE IN AN ORDINANCE, AS PROVIDED BY STATE LAW, ~~theretofore in existence~~ without setting forth such provisions, but the adopting ordinance shall be published in full. ~~At least three (3) copies~~ A COPY OR COPIES of the code or public record shall be filed in the office of the City Clerk and kept available for public use and inspection, AS PROVIDED BY STATE LAW. A code or public record enacted by reference may be amended in the same manner.

No penalty clause shall be enacted by reference thereto. A penalty clause contained in a code or public record adopted by reference shall be set forth in full in the adopting ordinance.”

“Sec. 13. Codification of ordinances.

Any or all ordinances of the city which have been enacted and published in the manner required at the time of their adoption, and which have not been repealed, shall MAY be compiled, consolidated, revised, indexed and arranged as a comprehensive ordinance code, and such code may be adopted by reference, with the same effect as an ordinance, by the passage of any ordinance for such purpose. Such code need not be published in the manner required for other ordinances but ~~not less than three~~ ONE (31) copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to the adoption thereof.

Ordinances codified shall be repealed as of the effective date of the code AMENDMENTS. Amendments to the code shall be enacted in the same manner as ordinances.”

b. Article 8. Contracts.

Brent Stockwell reviewed the proposed changes to Article 8, indicating that the contracts referenced in this Article are those that are authorized by the Council and signed by the Mayor.

Chair Twist asked for clarification regarding the proposed changes to Section 2, the Charter language addressing the lowest responsible bidder, as well as the requirement regarding executing the contracts in writing. Sherry Scott said the new language addresses design-build contracts. The City needs to ensure a contractor is capable of performing the work; therefore, the lowest bid may not always receive the award.

The Task Force discussed possible changes to the proposed language of Section 2.

Sherry Scott agreed to review Section 2 with staff, and bring back amended language to the Task Force at a later meeting.

Charlie Smith asked for clarification regarding the purpose of 5(b), and asked whether that event is covered under existing State law. Sherry Scott indicated the recommended provision regarding fraud and collusion would be a worthwhile addition, and would allow the City more flexibility in these matters.

MOTION AND VOTE

CHARLIE SMITH MOVED THAT THE TASK FORCE RECOMMEND TO THE CITY COUNCIL THAT ARTICLE 8, SECTION 1 BE AMENDED AS PRESENTED. CINDI EBERHARDT SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

“Sec. 1. Preparation.

All contracts shall be executed in the name of the City of Scottsdale by the Mayor, except as it may be otherwise provided either by this charter, ~~or~~ by law, OR BY ORDINANCE OR RESOLUTION OF THE CITY COUNCIL. ~~and~~ CONTRACTS AUTHORIZED THROUGH COUNCIL ACTION must be countersigned by the City Clerk who shall number and register the same in a book kept for that purpose.”

The Task Force agreed to discuss Sections 2 and 5 at the next regular meeting, after staff has reviewed the following recommendations: From Section 2, strike “when required” from the second sentence and append onto the end of it “some additional discretion for the City Council.” They also agreed to address the use of the word “voidable” versus “void” in Section 5.

c. Article 12. Franchise and Public Utilities

Sherry Scott discussed the purpose of Article 12, which deals with franchises and public utilities. One issue that has not been addressed with the proposed changes is the fact that the City enters into relationships with what citizens would consider utility providers through licensing and franchise agreements. State statutes control franchise agreements, as well as when something would be considered a franchise agreement. Statute requires those franchise agreements to go to the vote, and provides that they cannot be for longer than 25 years.

Staff proposes a recommendation to Section 1, which provides currently that the franchise shall be published in full in the official newspaper. In keeping with previous recommendations regarding publishing notices, staff recommends language that would require the proposed franchise be published prior to an election in accordance with State law.

Susan Bitter Smith discussed the differences between franchises and licenses, indicating a license is a non-exclusive authorization to operate and a franchise is exclusive.

MOTION AND VOTE

ALAN KAUFMAN MOVED THAT THE TASK FORCE RECOMMEND TO THE CITY COUNCIL THE AMENDMENTS TO ARTICLE 12, SECTION 1 AS PRESENTED. CINDI

EBERHARDT SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

“Sec. 1. Franchises.

A person desiring to obtain a franchise to operate a public utility from this city shall present the franchise desired to the city council of the city and it shall be filed among its records.

If the council deems the granting of the franchise beneficial to the city, it shall pass a resolution, ~~to be spread upon its record~~ stating that fact, and shall submit the question to the qualified voters, as to whether or not the franchise shall be granted, at the following regular election held in the city or at a special election called for that purpose.

~~The proposed franchise shall be published in full in the official newspaper of the city once a week for four (4) consecutive weeks prior to the election, or as otherwise provided by law, and the cost of same, together with the election expenses shall be paid by the applicant for such franchise~~ THE PROPOSED FRANCHISE SHALL BE PUBLISHED PRIOR TO THE ELECTION IN ACCORDANCE WITH STATE LAW.

If a majority of the votes cast are in favor of granting the franchise, the council shall grant the franchise only in the form filed and published.

A franchise shall not be granted for a longer term than twenty-five (25) years.

Before calling any such election, the estimated expense of publication and election thereof (to be determined by the council) shall be first deposited by the applicant for such franchise with the City Clerk.”

Chair Twist noted that the Orange Coalition submitted proposed amendments to Section 2.

Susan Bitter Smith expressed concern regarding the Corporation Commission being appointed as a third-party arbitrator in their proposal.

Sherry Scott explained the process of obtaining a certificate of necessity, and the Task Force invited Stan Lutz to discuss this issue.

Mr. Lutz reviewed the proposed amendment to Section 2 submitted by the Orange Coalition, and clarified that multiple State agencies could be involved in the operations of any particular utility. As proposed, an order from just one of those State agencies would be required.

Susan Bitter Smith expressed concern regarding the vagueness of the proposed language, indicating that different State agencies may have differing opinions. Conflicts could harm what the Orange Coalition is attempting to do, which is to preclude arbitrary and capricious acquisition of a private utility.

Alan Kaufman questioned the need to change Section 2 at all, and asked how it would benefit the City. Stan Lutz said it would bring the Charter into conformance with State statutes contained in Title 9. He discussed a series of condemnations of utility properties that have resulted in increased rates, delivery and service problems for consumers.

The Task Force further discussed the proposed changes to Article 12, Section 2.

In response to an inquiry by Jim Derouin, Sherry Scott explained the City already provides some wastewater facilities to areas of Paradise Valley, and is not required to go to the Corporation Commission when rates are changed. If the City condemns a utility that serves part of a different city, it can decide to serve only its own citizens.

The Task Force discussed utility acquisitions, serving other communities, and the proposed amendments with Stan Lutz.

The Task Force asked for additional information regarding this issue from the City Attorney's Office and the Water Department, and agreed to further discussion at the January 11, 2010 meeting.

d. Article 13. General Provisions

Sherry Scott gave an overview of Article 13, Section 1, noting that it is out of date since it was written before the Public Records Law existed.

MOTION AND VOTE

CINDI EBERHARDT MOVED THAT THE TASK FORCE RECOMMEND TO THE CITY COUNCIL THAT ARTICLE 13, SECTION 1 BE AMENDED AS PROPOSED. ALAN KAUFMAN SECONDED THE MOTION, WHICH PASSED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

"Sec. 1. Publicity of records.

All records and accounts of every office, department or agency of the city shall be open for inspection by any citizen, any representative of a citizen's organization or any representative of the press at all reasonable times and under reasonable regulations established by the city council, except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish PURSUANT TO ALL APPLICABLE LAWS."

e. Article 14. Succession in Government

No changes noted at this time.

f. Article 15. Gender

Sherry Scott stated this provision would not be necessary if the Task Force decided to change all of the language to gender-neutral wording.

The Task Force asked staff to research whether the Charter could be made gender-neutral in one ballot question, and report back at the next meeting.

4. Review, discuss, and possibly amend draft agenda for January 11, 2010 meeting

The Task Force will discuss Article 7, Section 14 and Article 12, Section 2 of the Charter, as well as review all changes proposed to date for any changes or adjustments.

Charlie Smith requested that staff bring back information at the next meeting regarding any statutory requirements the City would have to go through prior to exercising eminent domain for a private water company.

Susan Bitter Smith stated she would like to discuss and possibly make changes to Article 5, regarding Board and Commission duties and obligations.

Adjournment

With no further business to discuss, the meeting adjourned at 7:15 p.m.

Respectfully submitted,
A/V Tronics, Inc. DBA AVTranz.

Reviewed by
Brent Stockwell, Senior Advisor

Officially approved by the Charter Review Task Force on Monday, January 11, 2010.